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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 76-1418

COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, *et al.*,

Petitioners,

v.

RUDOLPH A. RICHARDS, *et al.*,

Respondents.

BRIEF OF RESPONDENTS RUDOLPH A. RICHARDS, *et al.* IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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Page

TABLE OF CONTENTS

QUESTION PRESENTED FOR REVIEW 1

STATEMENT OF THE CASE 2

REASONS FOR GRANTING A WRIT OF CERTIORARI 7

ARGUMENT

I. There is no conflict in the law or decisions of varying jurisdictions requiring resolution by the Supreme Court of the United States 9

II. The existence of Permit Parking Plans in other jurisdictions not identical to the Arlington ordinance and the mere possibility that additional communities might adopt such ordinances are not reasons of sufficient and special importance to warrant review of the decision of The Supreme Court of Virginia declaring the Arlington ordinance invalid 15

III. Denial of a writ of certiorari will not interfere with or prevent the control of air pollution 17

CONCLUSION 20

APPENDIX: Opinion of the Circuit Court of Montgomery County, Maryland 1a

TABLE OF AUTHORITIES

Cases:

Chalke v. Birmingham & N.W. R. Co., 249 U.S. 522, 63 L.Ed. 748, 39 S.Ct. 366 (1919) 13

Commonwealth v. Petralia, No. M-729, Sup. Jud. Ct. Mass. (April 29, 1977) 12

Georgetown Association of Businessmen v. District of Columbia, D.C. Super. Ct., Civ. No. 7242-76 (1977) 12

Kaufman v. West, 133 Wash. 192, 233 Pac. 321 (1925) 10

Louis K. Leggett Co. v. Lee, 288 U.S. 517, 77 L.Ed. 929, 53 S.Ct. 481, 85 A.L.R. 699 (1933) 15

Cases, continued: Page

Morey v. Doud, 354 U.S. 457, 1 L.Ed.2d 1485, 77 S.Ct. 1344, 134 A.L.R. 841 (1957) 14

Mullaney v. Anderson, 342 U.S. 415, 96 L.Ed. 458, 72 S.Ct. 428 (1952) 13

Old Dearborn Co. v. Seagram Corp., 299 U.S. 183, 81 L.Ed. 109, 57 S.Ct. 139, 106 A.L.R. 1476 (1936) 14

Rogers v. Helvering, 320 U.S. 410, 88 L.Ed. 134, 64 S.Ct. 172 (1943) 8

Southwestern Oil Co. v. Texas, 217 U.S. 114, 54 L.Ed. 688, 30 S.Ct. 496 (1910) 13

State of Maryland v. William L. Thompson, Cir. Ct. Montgomery County, Crim. No. 19018 (1977)..... 11

State v. Whisman, 24 Ohio Misc. 59, 263 N.E.2d 411 (1970) 10

Walters v. City of St. Louis, 347 U.S. 231, 98 L.Ed. 660, 74 S.Ct. 505 (1954) 14

Positive Law:

U.S. Constitution, Fourteenth Amendment, Sec. 1 .... *passim*

Regulations:

Rule 19, Rules of the Supreme Court of the United States 7

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QUESTION PRESENTED

Whether a County Ordinance purportedly enacted for the purpose of protecting residential neighborhoods from polluted air, excessive noise, trash caused by vehicles entering the neighborhood to park, loss of residential character, inefficiency in street maintenance, danger to children and loss of property values, which grants to the occupants of one hundred one (101) buildings adjoining limited portions of three specific

public streets a monopolistic privilege to park an unlimited number of motor vehicles at no expense to said occupants upon the said limited portions of public streets while denying to all other occupants of other buildings located elsewhere the equal right to park motor vehicles upon the said limited portions of public streets, is an arbitrary and unreasonable classification violative of the equal protection rights of the Constitution of the United States of America.

STATEMENT OF THE CASE

Several years ago, Petitioner, the County Board of Arlington County, hereinafter referred to as "County", authorized and permitted the erection and construction of many high-rise, high density buildings, (Rec. 157, 158)[1] including offices, hotels, apartments, theaters, and mercantile stores, (Rec. 160), in an industrial zoned area bounded on one side by a residential area and bounded on the other side by railroad yards and the National Airport in the southern part of Arlington County, Virginia. At that time, County failed to require that the developers of the said buildings provide sufficient off-street parking for motor vehicles sufficient to meet the needs of the thousands of persons who would use the said buildings. (Rec. 171, 172, 94). As a result of such failure, many of the present occupants of the said buildings, such as Respondents, hereinafter referred to as "Government Employees", who must commute by automobile to their work in such buildings, owing to inadequate public transit facilities, are forced to park their automobiles during normal daytime working hours in the public streets in the adjoining residential neighborhood, as well

[1] "Rec." refers to the Appellant's Appendix filed with the Supreme Court of Virginia on appeal below.

as on the public streets immediately adjacent to the high-rise buildings. (Rec. 48, 49).

Approximately seventy-six (76) residents out of the aforesaid residential area which contained several hundred families, (Rec. 88), although having adequate off-street parking for their own automobiles, did not like the appearance of automobiles, other than their own, parked on the public street in front of their dwelling places. (Rec. 179). Accordingly, they banded together in an organization, termed a "Citizen's Association", which purported to represent an entire community of several hundred families, and brought political pressure upon County and Petitioner, Bert W. Johnson, hereinafter referred to as "Manager", to prohibit all persons other than themselves from using the public streets in front of their dwellings for the parking of motor vehicles. (Rec. 335, 160, 82, 83, 84).

County and Manager, in 1972, in response to said pressure, put into operation a "Permit Parking Plan" which, in effect, gave to the occupants of the 101 dwelling places adjoining limited parts of three public streets exclusive rights to park anywhere on the said parts of public streets during the hours of 8:00 A.M. to 5:00 P.M., Mondays through Fridays of each week, excluding holidays. (Rec. 49, 52, Pl. Ex. #3, Rec. 160).

A number of persons employed in the aforesaid high-rise buildings subsequently brought suit in the Circuit Court of Arlington County, Virginia, and succeeded in having the Court declare the said Permit Parking Plan invalid. (Rec. 163).

Thereafter, County revised its ordinances, and in 1974 introduced and placed into operation with the assistance of Manager and Petitioner, Roy McLaren, hereinafter referred to as "Chief", a modified and

renovated Permit Parking Plan, (Rec. 163, Pl. Ex. #1), which operated upon the identical streets and areas as the earlier plan. (Pl. Ex. #3). The Permit Parking Plan, as implemented and enforced most recently, grants to persons who happen to reside in 101 specific buildings, (Pl. Ex. #3, Rec. 51), an exclusive privilege, at no expense to such person, to park an unlimited number of motor vehicles of any size, shape or configuration registered at the address of the said buildings, (Pl. Ex. #1), on the aforesaid three public streets which contain 153 automobile size parking spaces, (Rec. 52, Pl. Ex. #3), during the hours of 8:00 A.M. through 5:00 P.M. every Monday through Friday, excepting holidays. (Pl. Ex. #1). With the exception of service or delivery vehicles, unmarked vehicles that do business with a resident of the said 101 buildings and overnight visitors to the said buildings, all other vehicles are prohibited from parking on the said designated portions of streets during the said hours and violation of the prohibition is a crime which is punishable as a misdemeanor. (Rec. 50, Pl. Ex. #1, Pl. Ex. #3).

The preamble to the ordinance enacted by County to provide authority for the Permit Parking Plan states that its purpose is to protect residential neighborhoods from polluted air, excessive noise, trash caused by vehicles entering the neighborhood to park, loss of residential character, inefficiency in street maintenance, danger to children and loss of property values. (Pl. Ex. #1)

At the time of trial below, Government Employees, four of whom were residents and citizens of Arlington County, Virginia; three of whom were residents and citizens of Alexandria, Virginia; five of whom were residents and citizens of Fairfax County, Virginia; and two of whom were residents and citizens of the District

of Columbia, and all of whom were employed in the aforesaid high-rise buildings, and who all, with the exception of Rudolph A. Richards, commuted to work by driving their own automobile, (Rec. 46-49, 80-82, 96-99, 106-107, 116, 119, 123, 124, 134-136, 140-141, 151-152, 208-211), testified that they were very familiar with the neighborhood covered by the Permit Parking Plan, both before the plan was put into operation and after, having not only parked almost daily on the streets involved, (Rec. 55, 99, 109, 125, 141, 152, 209), but also having walked along the said streets twice a day five days a week for many years. (Rec. 55, 81, 99, 109, 117, 126, 141, 152, 209). Government Employees testified that there were no problems in the said neighborhood prior to the plan insofar as air quality, noise, trash, loss of residential character, street maintenance, danger to children, and loss of property values was concerned. (Rec. 56-59, 84-87, 99-101, 110-111, 117-120, 126-127, 142-148, 153-154). Likewise, all testified that there was little change in the neighborhood after the Permit Parking Plan was put into operation, except the cars that used to park on said streets were parked a few blocks further away. (Rec. 59, 60, 87-91, 101-102, 111-114, 120, 128, 145-148, 154-156). There was some testimony that occasionally smells were noticed from County's trash incinerator, (Rec. 60, 61, 90-91, 144), and from County's sewage treatment plant, (Rec. 61), each of which is only a few blocks removed from the said neighborhood, (Rec. 61). Likewise, there was testimony about the proximity of the neighborhood to National Airport with the noise of jet planes taking off and the noise and probable air pollution caused by U.S. Highway No. 1 and Interstate Highway No. 95 which border the said neighborhood on two sides. (Rec. 62, 143). There was no testimony or evidence produced that any air pollution existed in the neighborhood or in Arlington County.

A viewing by the Trial Court of the neighborhood as a whole disclosed that adjoining public streets in the same neighborhood not controlled by the Permit Parking Plan were controlled by switch parking, i.e. no parking on one side of the street in the A.M. and no parking on the opposite side of the street in the P.M. (Rec. 322, 323), by metered parking or by "No Parking" restrictions. Fewer parked cars were observed on switch parking streets than on streets controlled by the Permit Parking Plan.

The true objective of the Permit Parking Plan was to deny Government Employees the right to park on the public streets designated while at the same time reserving the said streets and the said 153 parking spaces for the use or non-use of the occupants of the said 101 buildings. (Rec. 162). The sole criteria for determining eligibility to park on the streets covered by the Plan is residence next to the street. (Rec. 167). The persons desiring the Permit Parking Plan wanted the public streets covered by the Plan free of Government Employees vehicles because the sight of such automobiles offended their aesthetic senses. (Rec. 179).

The Permit Parking Plan does not treat all citizens alike, even in the same neighborhood. Respondent, Rudolph A. Richards, although living on a street not under the plan, lives in the identical neighborhood covered by the plan. His home is one block away from the streets reserved for his neighbors. (Rec. 81). Richards does not have parking restrictions on the public street in front of his house. (Rec. 91). Anyone can park in front of his house, including his neighbors privileged by the Plan. Richards can not park in front of his said neighbors house.

Respondents testified that there was inadequate public transportation to meet their needs in commuting to their places of employment.

Government Employees brought the action in the Circuit Court of Arlington County, Virginia, to have the Permit Parking Plan declared invalid as in violation of their federal and state Constitutional rights.

The Circuit Court of Arlington County found that the Permit Parking Plan as applied to Government Employees violated their rights under the due process clause of the State and Federal Constitutions and denied to them the equal protection of the laws under the Federal Constitution. (App. B.)[2]

Petitioners promptly after learning of the Circuit Court of Arlington County decision instituted a switch parking restriction on the very same portions of public streets as had been covered by the restrictions of the Permit Parking Plan.

Respondents subsequently appealed the decision of The Circuit Court of Arlington County to the Supreme Court of Virginia where the lower court decision was affirmed. (App. C)[3]

REASONS FOR DENYING A WRIT OF CERTIORARI

ARGUMENT

A writ of certiorari for the review of a State Supreme Court decision should be granted only where there are special and important reasons for such a review. *Rule 19, Rules of the Supreme Court of the United States.* While the power to issue a writ of certiorari is a comprehensive and unlimited one it should be exercised

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[2]App. B refers to Appendix B of Petition for Writ of Certiorari herein.

[3]App. C refers to Appendix C of Petition for Writ of Certiorari herein.

sparingly and only in cases of gravity and importance. *Rogers v. Helvering*, 320 U.S. 410, 88 L.Ed. 134, 64 S.Ct. 172, (1943). No such reasons exist for reviewing the per curiam decision of the Supreme Court of Virginia.

If the writ is denied no special and important problems will arise. No insurmountable problems for governmental entities attempting to solve difficulties arising out of the growth of the population and the public's dependence upon motor vehicles for transportation will develop. Permit Parking Plans such as the one adopted by Arlington County which grant monopolies in the use of public streets to a limited and select class of persons are not the only answer to problems of traffic, air pollution, noise, littering, ease of ingress and egress to property, efficiency in maintaining streets and preservation of residential values. If vehicles parked on public streets are an evil per se such remains an evil regardless of the ownership of said vehicles. If parked cars create problems there are adequate solutions to such problems other than the creation of a privileged class in society whose members enjoy a use of the public streets denied to all others.

Petitioners argue two reasons for granting a writ. First it is argued that the Virginia decision conflicts with "the entire body of law that has grown up around . . . The Equal Protection clause." Secondly it is argued that "many communities throughout the country have acted or are considering acting as Arlington" did in developing a Permit Parking Plan.

I.

THERE IS NO CONFLICT IN THE LAW OR DECISIONS OF VARYING JURISDICTIONS REQUIRING RESOLUTION BY THE SUPREME COURT OF THE UNITED STATES.

1. Consider the first stated reason. Does the Virginia decision in fact conflict with "the entire body of law"?

The U.S. Supreme Court has not ruled upon a Permit Parking Plan. Likewise, the lower federal courts have not ruled upon such a plan. One of the early state court decisions involving a form of parking restriction aimed at an arbitrary and unreasonable classification of motorists arose when the City of Chehalis, Washington, enacted an ordinance which provided that it was unlawful for any owner or any occupant or any visitor of an apartment house or the servant or employee of any of the said persons to park his automobile on any street adjacent to an apartment house, excepting only that portion of the street "adjacent to and on the same side of the thoroughfare . . . to which said apartment house is or shall be appurtenant." The Supreme Court of Washington, in a well-reasoned opinion, held that the ordinance restricted only the owners, occupants, visitors and employees of an apartment house from parking their automobiles where they might have seen fit and accordingly violated the Washington State Constitution which prohibited enactment of laws which granted to any citizen or class of citizens privileges or immunities which upon the same terms would not equally belong to all citizens. The court stated that the parking ordinance was unjust, unreasonable and discriminatory, in that it did not operate alike on all persons and property under the same circumstances and conditions and was therefore class legislation in discriminating against some and

favoring others. *Kaufman v. West,* 133 Wash. 192, 233 Pac. 321 (1925). The courts of Virginia said much the same thing about the Arlington ordinance. No conflict appears between said decisions, although they deal with different ordinances and constitutions. The theory and logic are the same.

State v. Whisman, 24 Ohio Misc. 59, 263 N.E.2d 411, (1970), involved a Permit Parking Plan of the City of New Boston, Ohio, that was almost identical to the Arlington plan. In holding that the new Boston plan violated the equal protection requirements of both the U.S. and Ohio Constitutions the court said, "although an owner of premises abutting on a street possesses the right of ingress and egress, he has no right superior to that of any other member of the public at large to park automobiles in front of his premises." The court further indicated that the new Boston ordinance ". . . unequivocably confers upon the residents of the areas involved the exclusive first right to park vehicles in those areas" and that the ordinance "creates rights in residents of the area superior to other citizens of New Boston" and "absolutely discriminates against all persons who are not residents of new Boston, by making it an offense for them to park in the area.

The Virginia decision follows the Whisman case. There is no conflict between the two decisions requiring resolution by the U.S. Supreme Court.

In 1974 Montgomery County, Maryland, adopted a Permit Parking Plan ordinance which operates similarly to the Arlington ordinance. Very recently a Bethesda, Maryland, businessman whose place of business on Wisconsin Avenue adjoins a twenty-five square block residential area set aside by Montgomery County for parking by residents only was ticketed for parking in the set-aside area, one and a half blocks from his place of

business, without a permit. He appealed his conviction of violation of the ordinance to the Circuit Court of Montgomery County based upon violation of his constitutional rights. In a carefully thought out opinion the court ruled that the Montgomery County ordinance violated the 14th Amendment by making an unreasonable classification which amounts to class legislation. The court stated that the public streets are for the use of all people and that no one has an absolute right to park in front of his home. *State of Maryland v. William L. Thompson,* Cir. Ct. Montgomery County, Crim. No. 19018.[4] Here again, there is no conflict with the Virginia decision as to the principles of law enunciated.

The only other court decisions involving Permit Parking Plan ordinances are distinguishable from the Arlington ordinance.

The City of Cambridge, Mass. enacted an ordinance which permitted all residents of the city to obtain parking permits, but denied such permits to nonresidents. A non-resident attorney who parked on the city streets while attending court in Cambridge was ticketed for such parking without a permit and was subsequently found guilty of violating the ordinance. He appealed the traffic court conviction to the local Superior Court seeking a jury trial. The jury trial was never held since the Superior Court referred the question of the constitutionality of the ordinance directly to the Supreme Judicial Court of Massachusetts as is permitted under Massachusetts law. The latter court in its opinion stated that the Arlington ordinance was founded upon a different basis than the Cambridge ordinance and held that the non-resident attorney had failed to prove that the classification made by the Cambridge traffic director was invidiously

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[4]See Appendix to this brief.

discriminatory, thus the Cambridge ordinance was not unconstitutional. *Commonwealth v. Petralia*, No. M-729, Supreme Judicial Court of Massachusetts, decided April 29, 1977. Upon return of the case to the Superior Court it was dismissed by the court upon its own motion without a trial being held.

The Virginia courts accepted the evidence submitted by Respondents in their suit attacking the Arlington ordinance and found that the classification was arbitrary, unreasonable and invidiously discriminatory. As such the Virginia decision is not in conflict with the Massachusetts decision.

A Permit Parking Plan has also been established in the District of Columbia. Upon certain streets anyone, resident and non-resident alike, can park but only for two hours per time. Residents of the area can obtain a permit, upon payment of a $5 fee, which allows them to park without a time limitation. The ordinance has been contested before the District of Columbia Superior Court where a preliminary injunction was issued upon the basis of unconstitutionality. Many months later upon further proceedings before a different judge the suit was dismissed. *Georgetown Association of Businessmen v. District of Columbia*, D.C. Super. Ct., Civ. No. 7242-76. An appeal of the latter action is now pending.

The District of Columbia decision is not in conflict with the Virginia decision since the ordinances involved are quite dissimilar. Moreover, the District case has not yet been decided by the court of last resort within the jurisdiction.

Since the Virginia decision does not truly conflict with existing case law dealing with Permit Parking Plans, Petitioners argue that the Virginia decision conflicts with the broad general principles of law covering the equal

protection guaranty of the Constitution as declared by the U.S. Supreme Court in cases involving things other than Permit Parking Plans. Such an argument is without merit.

As a general rule, license or permit legislation that discriminates against non-residents of a state or non-residents of a political subdivision of a state, either by refusing to grant licenses or permits to such non-residents or by granting them on different terms where not required under the police power of the state is void as violating the federal Constitution. *Mullaney v. Anderson*, 342 U.S. 415, 96 L.Ed. 458, 72 S.Ct. 428, (1952); *Chalke v. Birmingham & N.W.R. Co.*, 249 U.S. 522, 63 L.Ed. 748, 39 S.Ct. 366, (1919). Arlington denies permits to non-residents of a local area within a neighborhood.

Although licensing and granting of permits may be a valid and lawful exercise of the police power of a local government any licensing requirements imposed on a given class must apply equally to all members of the class, may not discriminate among members of the same class, and may not, therefore, exempt only certain members of a class from an imposition placed on other members. *Southwestern Oil Co. v. Texas*, 217 U.S. 114, 54 L.Ed. 688, 30 S.Ct. 496, (1910). The Arlington ordinance concerns itself with motorists who wish to park their vehicles on the public streets. Such is the class. The ordinance divides the class into two subclasses, namely; motorists who are residents of properties abutting limited portions of three public streets and all other motorists.

In enacting license or permit legislation, local governments may resort to classifications provided the classification is reasonable, not arbitrary, and rests upon some ground of difference having a fair and substantial relation to the object of the legislation so that all persons

in similar circumstances are treated alike. *Old Dearborn Co. v. Seagram Corp.*, 299 U.S. 183, 81 L.Ed. 109, 57 S.Ct. 139, 106 ALR 1476, (1936). There is no reasonable basis for dividing motorists into two subclasses based solely upon residence or non-residence abutting upon a specified public street. The Arlington ordinance does not apply to all motorists equally, discriminates against some and favors others, makes the act of parking a motor vehicle under certain circumstances a misdemeanor as to some motorists while exempting other preferred motorists from the same restrictions and all without a valid public purpose.

The Circuit Court of Arlington County after a lengthy trial on which it had benefit of the testimony of transportation experts, planners, ecologists, a representative of the Environmental Protection Agency and many others, found that the Arlington classification bore no reasonable relationship to the stated objectives of the ordinance. A motorist's place of residence or his place of employment have nothing to do with traffic conditions, pollution, noise, trash and refuse thrown from vehicles, access to one's residence, the cleanliness and safety of the streets, property values, the safety of children and pedestrians and the general welfare of Arlingtonians.

The requirement for a reasonable ground of differences among classes established does not demand great differences, but it does contemplate substantial differences. *Louis K. Liggett Co. v. Lee*, 288 U.S. 517, 77 L.Ed. 929, 53 S.Ct. 481, 85 A.L.R. 699, (1933). Classification must rest on real not feigned differences and the distinction between the classes must have relevance to the purpose for which the classification is made. *Morey v. Doud*, 354 U.S. 451, 1 L.Ed.2d 1485, 77 S.Ct. 1344, 134 A.L.R. 841, (1957); *Walters v. City of St. Louis*, 347 U.S. 231, 98 L.Ed. 660, 74 S.Ct. 505,

(1954). Motorists are motorists regardless of where they reside. The real purpose for which the Arlington ordinance was enacted was to give to a select group of citizens exclusive rights in the streets abutting their residences as was proven by the testimony of those very same citizens at the trial below.

There is no conflict between the existing case law as it concerns Permit Parking Plans and the decision of the Supreme Court of Virginia nor is there any conflict between the Virginia decision and the broad general principles of law covering the equal protection guaranty of the Constitution as spelled out by decisions of the U.S. Supreme Court. There is no conflict of law to be resolved by the court and no special and important reason for granting a writ of certiorari herein.

II.

THE EXISTENCE OF PERMIT PARKING PLANS IN OTHER JURISDICTIONS NOT IDENTICAL TO THE ARLINGTON ORDINANCE AND THE MERE POSSIBILITY THAT ADDITIONAL COMMUNITIES MIGHT ADOPT SUCH ORDINANCES ARE NOT REASONS OF SUFFICIENT AND SPECIAL IMPORTANCE TO WARRANT REVIEW OF THE DECISION OF THE SUPREME COURT OF VIRGINIA DECLARING THE ARLINGTON ORDINANCE INVALID.

2. Consider now Petitioner's second and only other reason given for granting a writ of certiorari, namely, that "It is important that the decision . . . be reviewed . . . because residents' parking permit ordinances generally similar to Arlington's have been enacted or are being considered in many communities." The prior enactment of Permit Parking Plans similar to the Arlington ordinance and the possibility that other local governments might enact similar plans is not sufficiently

special and important to warrant a U.S. Supreme Court review at this time.

Petitioners do not assert to the court that another community has adopted a Permit Parking Plan ordinance identical to the Arlington ordinance. Thus the decision of the Virginia court will not necessarily be controlling if another court should review a different ordinance. Such has already occurred in Massachusetts where the Massachusetts court distinguished the Cambridge ordinance from the Arlington ordinance. The Massachusetts decision is not binding upon the Virginia courts anymore than the Virginia decision, which was first in time, was controlling in the Massachusetts case. Both decisions involved different ordinances as applied to differing facts. If the writ of certiorari is denied the Virginia decision will not be an absolute bar to the adoption of Permit Parking Plans by other communities. The only way that the Virginia decision would likely serve as an absolute bar would arise in the event another community attempted to enact and enforce an ordinance identical, except as to the geographic location, to the Arlington ordinance. Refusal by the U.S. Supreme Court to grant a writ of certiorari herein will merely leave the Virginia decision undisturbed.

Of the various other communities claimed by counsel to have ordinances similar to Arlington all except four have been the subject of litigation which has been discussed herein and none of those discussed, at this stage of proceedings, creates a special and important reason for review by the Court. As to the other four jurisdictions there has been no showing that the ordinances involved are sufficiently similar to the Arlington ordinance as to be affected by non-review of the same by this court. It would be a waste of this court's valuable time to review the Virginia decision based upon the mere possibility that

the ordinance of four other localities might be similar to the Arlington ordinance. It would be even more wasteful to consume the court's efforts in a review of the Virginia decision because there may be unknown local governments which might be considering adoption of a Permit Parking Plan.

The Petitioner's second asserted reason for granting a writ of certiorari herein should be rejected as not special and not important. The writ should be denied.

III.

DENIAL OF A WRIT OF CERTIORARI WILL NOT INTERFERE WITH OR PREVENT THE CONTROL OF AIR POLLUTION.

3. The Memorandum for the United States as Amicus Curiae submitted herein claims that the Arlington ordinance "arose out of the quest to reduce air pollution emitted from automobiles." A second assertion is that if the Virginia decision is allowed to stand without review other strategies to control air pollution will have to be devised. The Memorandum infers that control of air pollution was the major purpose of the ordinance, that the ordinance would effectively control air pollution, and that without the Arlington ordinance, air pollution will be uncontrollable.

Respondents disagree with the position taken by counsel for the United States.

Parked cars do not create air pollution. Parked cars on public streets do not create air pollution. Cars create or contribute to air pollution only when operating and it makes no difference in the amount of pollution whether the car is operated by a resident or non-resident of the area being polluted. Moreover, if air pollution is contributed to by operated vehicles the amount of air

pollution existant is not solely determined by the origin or destination of the journey made by the vehicle. Commuters from the outer suburbs may drive further than inner city residents to get to work but inner-city residents drive further than outer suburban commuters in visiting the ultramodern amenities of suburban shopping centers, golf courses and other suburban attractions. Substituting 156 parked cars of local residents for 156 parked cars of commuters upon limited portions of three public streets won't necessarily lessen air pollution.

The United States Environmental Protection Agency is in favor of reducing the amount of automobile driving being done in the Metropolitan Washington, D.C. area. There was evidence of the same produced by the Petitioners in the trial below. The United States infers that not only is the Arlington Permit Parking Plan ordinance the only effective approach to the control of air pollution available at this time but also that the plan does in fact control pollution.

There was no evidence produced at the trial below that the Arlington ordinance effectively controlled or lessened pollution. Moreover, there was no evidence that any air pollution in fact existed in the neighborhood affected by the ordinance. The only evidence concerning the quality of the air in the Permit Parking Plan neighborhood was produced by Respondents and it disclosed that the air quality was good both before and after enactment of the ordinance.

At the time of the trial below the Court's viewing of the restricted neighborhood and its surrounding environs disclosed that alternative parking controls, such as "switch parking," "limited time period parking," "no parking" and "metered parking," were in existence and being employed in the same neighborhood. It was also disclosed that some of the said alternative parking

controls were more effective than the Permit Parking Plan. The major difference between the alternative parking controls and the Permit Parking Plan is that only the Permit Parking Plan fails to treat all motorists the same.

If the operation of motor vehicles is a malady and limitation of operation is the cure, then all citizens should be required to partake of the medicine. The cure should not be forced upon those alone who reside at the perimeter, or beyond, of the Metropolitan area. The evidence at the trial disclosed that most, if not all, of the residents of the Permit Parking Plan area are owners of motor vehicles. Not one of the said residents complained of air pollution and they were the moving force that brought about the enactment of the ordinance. The major purpose of the ordinance was not control of air pollution. The ordinance arose out of the local residents' desire to reserve the parking portions of the public streets abutting their residences for their own exclusive use.

If the writ of certiorari is denied herein the United States, the State of Virginia, and the County of Arlington will not be forced to devise new methods to control air pollution. The alternative methods of pollution control have been in existence since times prior to the Arlington Permit Parking Plan ordinance. The alternative means can be used now and are being used now. Restrictions on parking such as those contemplated by the Arlington ordinance are not the answer to the problems of air pollution. The only thing accomplished by the Arlington ordinance is to give special privileges to a very few citizens while denying them to all others.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX

IN THE CIRCUIT COURT
FOR MONTGOMERY COUNTY, MARYLAND

Criminal No. 19018

STATE OF MARYLAND

v.

WILLIAM L. THOMPSON

MEMORANDUM

This matter comes before the court on appeal from a conviction of the defendant for violation of parking of his vehicle without a permit in an area providing for parking by permit only. All the facts have been stipulated and show that he was parking approximately one-half block from his place of business on Wisconsin Avenue in Bethesda (State's Ex. #1). The position on the street where he had parked was in a 25 square-block area which the County had set aside for residents only (State's Ex. #2) pursuant to Section 31-48A of the Montgomery County Code, adopted in 1974. The procedure was to issue the residents permits and this defendant, although a businessman in the area, was not a resident and did not therefore have a permit.

The defendant has filed his motion to dismiss on the basis that it denies him equal protection of the law under the Fourteenth Amendment of the United States Constitution, and the motion is resisted by the State's Attorney for Montgomery County. The County Attorney did not

participate, and the court was advised during argument that he does not share the views of the State's Attorney. Permits in the entire area were issued to residents only for their convenience in parking on public streets in front of their homes.

Similar attempts to restrict parking have been made in other jurisdictions throughout the country, and much publicity has been given on this subject generally. Local governments have an interest in regulating problems on public streets and if these regulations come within the legitimate area of police powers, namely, health, safety or morals, the ordinance will be upheld. The principle generally is that the regulation will not be disturbed so long as the classification rests upon some rational basis. The sole question, therefore, is whether this regulation providing for permits to residents in the area but denying them to any other person is a reasonable classification and one essential to the work of the government and a valid exercise of the police power. If parking is restricted as to time and fines are assessed equally to all parkers, or if parking is prohibited in some areas to all persons, this is perfectly proper. The ordinance involved, in its preamble, speaks of safety of the residents, but this cannot be considered a safety regulation since it creates no more and no less vehicular parking spaces. It speaks of health and the State suggests a threat of air pollution. It is not a persuasive argument to say that a residential parking permit program will abate air pollution. It speaks of need for residents to be close to their homes, but business enterprises also have a need for customers to be close to their place of business. Business people who are restricted from obtaining permits in this highly concentrated area in and immediately adjacent to a Bethesda business district may sustain economic damage, their employees may be unable to find adequate

alternative transportation, their customers may go elsewhere, and there are many other potential economic disadvantages immediately apparent. It speaks of the need for use of parking by visitors, but this ordinance prefers residents over visitors.

This type of an attempted regulation by class is distinguishable from many regulations which are completely proper under the police powers of government – such as signs of "No parking at any time," "No parking 8:00 a.m. to 5:00 p.m.", and no parking in front of fire plugs, fire and police stations, etc. This defendant is a businessman in the area and benefits are being given to a residential class of persons but not to him or persons in any other category, and this must be considered special class legislation. Public streets are for the use of all people, and I am not aware of any absolute right given one to park in front of his home.

While I am in entire sympathy with the residents in their plight in this heavily concentrated area, I am called upon to rationalize that the County can act as they have within the framework of the Fourteenth Amendment to our Constitution. The problem simply put is whether or not the use of public streets is for use by motorists in general wherever they live or work, or whether a certain class of motorists may be favored because they happen to reside along a public street – this at the expense of those who live elsewhere and who, incidentally, also have problems.

I recognize that I am a strict constructionist of the Constitution, but I do not believe that even today we can bend our Fourteenth Amendment to sustain this type of discrimination between two classes of owners of motor vehicles.

/s/ Ralph G. Shure

Ralph G. Shure, Chief Judge